

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BENJAMIN SHERMAN MATHIS,

No. C-11-3345 EMC (pr)

Petitioner,

v.

**ORDER DENYING PETITIONER'S
MOTION FOR RECONSIDERATION**

GEORGE NEOTTI, Warden,

(Docket No. 12)

Respondent.

Benjamin Sherman Mathis, a prisoner incarcerated at the R. J. Donovan Correctional Facility in San Diego, California, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge a 1988 conviction from Santa Clara County Superior Court. Mathis had filed a petition for writ of habeas corpus more than a decade ago, *Mathis v. Marshall*, No. C 91-20050 SW, challenging the same conviction; that petition was denied on the merits on July 29, 1992.

The Court dismissed the case currently at bar because the petition herein was a second or successive petition for which Mathis had not obtained permission from the United States Court of Appeals for the Ninth Circuit to file. *See* 28 U.S.C. § 2244(b)(3)(A). The dismissal was without prejudice to Mathis filing a petition in this Court after he obtains the necessary order from the Court of Appeals.

This matter is now before the Court for consideration of Mathis' motion for reconsideration of the order of dismissal of the instant case. In his motion for reconsideration, Mathis addresses the merits of the 1991 case and argues that the Court has authority to reopen his 1991 case. Regardless of whether he is correct that the Court has such authority, such motion for reconsideration should be

1 filed in the 1991 case (and not in this case) because the 1991 case is the one he seeks to reopen. He
2 has not shown any ground for reconsidering or setting aside the order of dismissal in the case at bar,
3 *i.e.*, Case No. C 11-33345 EMC. Accordingly, the motion for reconsideration is **DENIED**. (Docket
4 # 12.)


5 Mathis also filed a notice of appeal, which the Court treats as also requesting a certificate of
6 appealability. *See generally United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997). A
7 certificate of appealability will not issue. *See* 28 U.S.C. § 2253(c). This is not a case in which
8 "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a
9 constitutional right and that jurists of reason would find it debatable whether the district court was
10 correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

11 Petitioner's *in forma pauperis* application is **GRANTED**. (Docket # 8.)

12 The Clerk shall forward to the Court of Appeals the case file with this order. *See Asrar*, 116
13 F.3d at 1270.

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15 IT IS SO ORDERED.

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17 Dated: October 4, 2011

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20 EDWARD M. CHEN
21 United States District Judge
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